

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Glenn G. Clark and Brenda J. Clark,

Plaintiffs,

Court File No. 08-CV-05808  
RHK/JSM

**STIPULATION & ORDER**

vs.

Federal Deposit Insurance Corporation  
As Receiver for First National Bank of  
Nevada, First National Bank Holding  
Company, Design Mortgage,  
All Metro Title, Michael Fiorito aka  
Michael Fiori, Fortress Associates,  
and Mutual of Omaha Bank.

Defendants.

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Plaintiffs Glenn and Brenda Clark (“Plaintiffs”) and defendants FDIC as Receiver for First National Bank of Nevada (“FDIC-Receiver”), First National Bank Holding Company, Design Mortgage, All Metro Title, Michael Fiorito aka Michael Fiori, Fortress Associates and Mutual of Omaha Bank, through their undersigned counsel and individually, hereby stipulate and agree as follows:

1. Pursuant to 12 U.S.C. § 1821(d), Plaintiffs are required to exhaust their remedies against the FDIC-Receiver through the administrative claims process prior to continuing in this litigation.

2. Given the requirement of 12 U.S.C. § 1821(d), the parties agree that the above-captioned matter shall be stayed to allow Plaintiffs to exhaust their administrative remedies against the FDIC-Receiver.

3. The parties hereby stipulate and agree that the above-captioned matter shall be stayed until the earlier of: (a) sixty (60) days after April 29, 2009, which is 180 days from the date Plaintiffs filed their claim with the FDIC, or (b) sixty (60) days after the date of the notice of disallowance of Plaintiffs' claim.

4. Pursuant to 12 U.S.C. § 1821(d)(6), Plaintiffs shall make an election of remedies, if necessary, within the earlier time frame stated above in Paragraph 3, and shall provide notice to the Defendants and the Court of the same.

5. Should Plaintiffs elect to continue this suit, Defendants shall be required to serve and file an Answer to Plaintiffs' Second Amended Complaint within twenty (20) days of receiving Plaintiffs' notice described above in Paragraph 4.

Dated: 2/10/09

/s/ Jacqueline Williams  
Jacqueline Williams (0330668)  
2524 Hennepin Avenue  
Minneapolis, MN 55405  
Phone: 612.377.2299  
Attorney for Glenn and Brenda Clark

Dated: 2/10/09

/s/ Cheryl L. Hauch  
Cheryl L. Hauch (294500)  
Murnane Brandt  
30 East Seventh Street  
Suite 3200  
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Phone: 651.227.9411  
Attorney for FDIC as Receiver for First  
National Bank of Nevada

Dated: 2/10/09

/s/ David D. Dodge  
David D. Dodge  
Lorona, Steiner, Ducar, Coughlin &  
Horowitz, PLLC  
3003 North Central Avenue  
Suite 1800  
Phoenix, AZ 85012-2909  
Attorney for First National Bank Holding  
Company

Dated: 2/10/09

/s/ Nathan J. Knoernschild  
Nathan J. Knoernschild  
Thomsen & Nybeck, PA  
3300 Edinborough Way  
Suite 600  
Edina, MN 55435-5962  
Phone: 952.835.7000  
Attorney for Fortress Associates, Inc.

Dated: 2/10/09

/s/ Michael A. Fish  
Design Mortgage Associates, LLC

Dated: \_\_\_\_\_

All Metro Title

Dated: \_\_\_\_\_

Michael Fiorito aka Michael Fiori

Dated: \_\_\_\_\_

\_\_\_\_\_  
Mutual of Omaha Bank

**ORDER**

Based upon the foregoing Stipulation by and among Plaintiffs and Defendants, **IT IS HEREBY ORDERED:**

1. The above-captioned matter shall be stayed to allow Plaintiffs to exhaust their administrative remedies against the FDIC-Receiver.
2. The above-captioned matter shall be stayed until the earlier of: (a) sixty (60) days after April 29, 2009, which is 180 days from the date Plaintiffs filed their claim with the FDIC, or (b) sixty (60) days after the date of the notice of disallowance of Plaintiffs' claim.
3. Pursuant to 12 U.S.C. § 1821(d)(6), Plaintiffs shall make an election of remedies, if necessary, within the earlier time frame stated above in Paragraph 2, and shall provide notice to the Defendants and the Court of the same.
4. Should Plaintiffs elect to continue this suit, Defendants shall serve and file an Answer to Plaintiffs' Second Amended Complaint within twenty (20) days of receiving Plaintiffs' notice described above in Paragraph 3.

Dated: February 12, 2009

s/Richard H. Kyle  
RICHARD H. KYLE  
United States District Judge